

Michael D. Kinkley
Scott M. Kinkley
Michael D. Kinkley, P.S.
4407 N. Division, Suite 914
Spokane, WA 99207
(509) 484-5611
mkinkley@qwestoffice.net
skinkley@qwestoffice.net

Kirk D. Miller
Kirk D. Miller, P.S.
209 E. Sprague Ave.
Spokane, WA 99202
(509) 413-1494
kmiller@millerlawspokane.com

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly
situated,

Plaintiff,

v.

SUTTELL & ASSOCIATES;
MIDLAND FUNDING, LLC; MARK
T. CASE, and JANE DOE CASE,
husband and wife, KAREN HAMMER
and JOHN DOE HAMMER

Defendants.

Case No.: CV-09-251-EFS

[PROPOSED]

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action may involve production of
confidential, proprietary, or private information for which special protection from
public disclosure and from use for any purpose other than prosecuting this
PROTECTIVE ORDER - 1

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1 litigation would be warranted. This Order does not confer blanket protections on
2 all disclosures or responses to discovery and that the protection it affords extends
3 only to the limited information or items that are entitled, under the applicable legal
4 principles, to treatment as confidential. As set forth in Section 10, below, this
5 Protective Order creates no entitlement to file confidential information under seal;
6 the procedures that must be followed and the standards that will be applied when a
7 party seeks permission from the Court to file material under seal will be governed
8 by applicable law.
9

11 **1. DEFINITIONS**

12 1.1. Party: any party to this action, including all of its officers,
13 directors, employees, consultants, retained experts, and outside counsel (and their
14 support staff).
15

16 1.2. Disclosure or Discovery Material: all items or information,
17 regardless of the medium or manner generated, stored, or maintained (including,
18 among other things, testimony, transcripts, or tangible things) that are produced or
19 generated in disclosures or responses to discovery in this matter.
20

21 1.3. “Confidential” Information or Items: information (regardless of
22 how generated, stored or maintained) or tangible things that qualify for protection
23 under standards developed under Fed. R. Civ. P. 26(c).
24

25 1.4. Receiving Party: a Party that receives Disclosure or Discovery

1 Material from a Producing Party.

2 1.5. Producing Party: a Party or non-party that produces Disclosure
3 or Discovery Material in this action.
4

5 1.6. Designating Party: a Party or non-party that designates
6 information or items that it produces in disclosures or in responses to discovery as
7 “Confidential.”
8

9 1.7. Protected Material: any Disclosure or Discovery Material that is
10 designated as “Confidential.”

11 1.8. Outside Counsel: attorneys who are not employees of a Party
12 but who are retained to represent or advise a Party in this action.
13

14 1.9. House Counsel: attorneys who are employees of a Party.

15 1.10. Counsel (without qualifier): Outside Counsel and House
16 Counsel (as well as their support staffs).
17

18 1.11. Expert: a person with specialized knowledge or experience in a
19 matter pertinent to the litigation who has been retained by a Party or its/her/his
20 counsel to serve as an expert witness or as a consultant in this action and who is
21 not a past or a current employee of a Party or of a competitor of a Party and who,
22 at the time of retention, is not anticipated to become an employee of a Party or a
23 competitor of a Party. This definition includes a professional jury or trial
24 consultant retained in connection with this litigation.
25

1.12. Professional Vendors: persons or entities that provide litigation support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

2. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

3. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

4. DESIGNATING PROTECTED MATERIAL

4.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must use good faith efforts to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must use good faith efforts to designate for protection only those parts of material, documents, items, or oral or written communications that qualify

1 – so that other portions of the material, documents, items, or communications for
2 which protection is not warranted are not swept unjustifiably within the ambit of
3 this Order.
4

5 Mass, indiscriminate, or routinized designations are prohibited.
6 Designations that are shown to be clearly unjustified, or that have been made for an
7 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development
8 process, or to impose unnecessary expenses and burdens on other parties), may
9 expose the Designating Party to sanctions.
10

11 If it comes to a Party's or a non-party's attention that information or
12 items that it designated for protection do not qualify for protection, that Party or
13 non-party must promptly notify all other parties that it is withdrawing the mistaken
14 designation.
15

16 4.2. Manner and Timing of Designations. Except as otherwise
17 provided in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as
18 otherwise stipulated or ordered, material that qualifies for protection under this
19 Order must be clearly so designated before the material is disclosed or produced.
20

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (apart from
23 transcripts of depositions or other pretrial or trial proceedings), that the Producing
24 Party affix the legend "CONFIDENTIAL" at the top of each page that contains
25

1 protected material. If only a portion or portions of the material on a page qualifies
2 for protection, the Producing Party also must clearly identify the protected
3 portion(s) (*e.g.*, by making appropriate markings in the margins).
4

5 A Party or non-party that makes original documents or materials available
6 for inspection need not designate them for protection until after the inspecting
7 Party has indicated which material it would like copied and produced. During the
8 inspection and before the designation, all of the material made available for
9 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
10 identified the documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection under this
12 Order, then, before producing the specified documents, the Producing Party must
13 affix the legend "CONFIDENTIAL" at the top of each page that contains Protected
14 Material. If only a portion of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making
16 appropriate markings in the margins).
17
18
19

20 (b) for testimony given in deposition or in other pretrial or
21 trial proceedings, that the Party or non-party offering or sponsoring the testimony
22 identify on the record, before the close of the deposition, hearing, or other
23 proceeding, all protected testimony. When it is impractical to identify separately
24 each portion of testimony that is entitled to protection, and when it appears that
25

1 substantial portions of the testimony may qualify for protection, the Party or non-
2 party that sponsors, offers, or gives the testimony may invoke on the record (before
3 the deposition or proceeding is concluded) a right to have up to 20 days to identify
4 the specific portions of the testimony as to which protection is sought. Only those
5 portions of the testimony that are appropriately designated for protection within the
6 20 days shall be covered by the provisions of this Stipulated Protective Order.
7

8 Transcript pages containing Protected Material must be separately bound by
9 the court reporter, who must affix to the top of each such page the legend
10 “CONFIDENTIAL,” as instructed by the Party or nonparty offering or sponsoring
11 the witness or presenting the testimony.
12

13
14 (c) for information produced in some form other than
15 documentary, and for any other tangible items, that the Producing Party affix in a
16 prominent place on the exterior of the container or containers in which the
17 information or item is stored the legend “CONFIDENTIAL.” If only portions of
18 the information or item warrant protection, the Producing Party, to the extent
19 practicable, shall also identify the protected portions.
20

21 4.3. Inadvertent Failures to Designate. If timely corrected, an
22 inadvertent failure to designate qualified information or items as “Confidential”
23 does not, standing alone, waive the Designating Party’s right to secure protection
24 under this Order for such material. If material is appropriately designated as
25

1 “Confidential” after the material was initially produced, the Receiving Party, on
2 timely notification of the designation, must make reasonable efforts to assure that
3 the material is treated in accordance with the provisions of this Order.
4

5 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 5.1. Timing of Challenges. Unless a prompt challenge to a
7 Designating Party’s confidentiality designation is necessary to avoid foreseeable
8 substantial unfairness, unnecessary economic burdens, or a later significant
9 disruption or delay of the litigation, a Party does not waive its right to challenge a
10 confidentiality designation by electing not to mount a challenge promptly after the
11 original designation is disclosed.
12

13 5.2. Meet and Confer. A Party that elects to initiate a challenge to a
14 Designating Party’s confidentiality designation must do so in good faith and must
15 begin the process by conferring directly (in voice to voice dialogue; other forms of
16 communication are not sufficient) with counsel for the Designating Party. In
17 conferring, the challenging Party must explain the basis for its belief that the
18 confidentiality designation was not proper and must give the Designating Party ten
19 (10) days to review the designated material, to reconsider the circumstances, and, if
20 no change in designation is offered, to explain the basis for the chosen designation.
21 A challenging Party may proceed to the next stage of the challenge process only if
22 it has engaged in this meet and confer process first.
23
24
25

1 5.3. Formal Challenge to Designation. If, after engaging in the meet
2 and confer process, a challenging Party still contends that a confidentiality
3 designation was not proper, the challenging Party may at any time give written
4 notice to the Designating Party stating its objection to the confidentiality
5 designation. The Designating Party has twenty-five (25) days from receipt of such
6 written notice to apply to the Court for an order specifically designating the
7 Disclosure or Discovery Material at issue as confidential. The Party seeking such
8 an order has the burden of establishing good cause for the Disclosure or Discovery
9 Material to be treated as confidential.
10

11 5.4. Treatment of Information While Challenge is Pending.
12 Notwithstanding any challenge to the designation of Disclosure or Discovery
13 Material as confidential, all materials designated as such must be treated as such
14 and subject to this order until one of the following occurs:
15

16 (a) the Designating Party withdraws its confidentiality
17 designation in writing;
18

19 (b) the Designating Party fails to apply to the Court for an
20 order designating the material confidential within the time period specified above
21 after receipt of a written challenge to such designation; or
22

23 (c) the Court decides the material at issue is not subject to
24 protection as confidential under this order.
25

1 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 6.1. Basic Principles. A Receiving Party may use Protected
3 Material that is disclosed or produced by another Party or by a non-party in
4 connection with this case only for prosecuting, defending, or attempting to settle
5 this litigation. Such Protected Material may be disclosed only to the categories of
6 persons and under the conditions described in this Order. When the litigation has
7 been terminated, a Receiving Party must comply with the provisions of section 11,
8 below (FINAL DISPOSITION).
9

10 Protected Material must be stored and maintained by a Receiving
11 Party at a location and in a secure manner that ensures that access is limited to the
12 persons authorized under this Order.
13

14 6.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the Court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 CONFIDENTIAL only to:
18

19 (a) the Receiving Party’s Outside Counsel of record in this
20 action, as well as employees of said Counsel to whom it is reasonably necessary to
21 disclose the information for this litigation and who have signed the “Agreement to
22 Be Bound by Protective Order” that is attached hereto as Exhibit A;
23

24 (b) the named parties to this litigation and the officers,
25

1 directors, and employees (including House Counsel) of the Receiving Party to
2 whom disclosure is reasonably necessary for this litigation and who have signed
3 the “Agreement to Be Bound by Protective Order” (Exhibit A);
4

5 (c) experts (as defined in this Order) of the Receiving Party
6 to whom disclosure is reasonably necessary for this litigation and who have signed
7 the “Agreement to Be Bound by Protective Order” (Exhibit A);
8

9 (d) the Court and its personnel;

10 (e) court reporters and videographers, and their staffs,
11 present at any hearing, deposition, or trial who have signed the “Agreement to Be
12 Bound by Protective Order” (Exhibit A);
13

14 (f) professional vendors to whom disclosure is reasonably
15 necessary for this litigation and who have signed the “Agreement to Be Bound by
16 Protective Order” (Exhibit A);
17

18 (g) during their depositions, witnesses in the action to whom
19 disclosure is reasonably necessary and who have signed the “Agreement to Be
20 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition
21 testimony or exhibits to depositions that reveal Protected Material must be
22 separately bound by the court reporter and may not be disclosed to anyone except
23 as permitted under this Stipulated Protective Order.
24

25 (h) the author of the document or the original source of the

1 information; and

2 (i) counsel representing clients asserting similar claims
3 against the same defendants, provided that before disclosing any Protected
4 Material to any such counsel, the Receiving Party must notify the Designating
5 Party ten (10) days before disclosing such material in order to give the Designating
6 Party an opportunity to move for a protective order preventing or limiting such
7 disclosure.
8
9

10 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
11 **PRODUCED IN OTHER LITIGATION**

12 If a Receiving Party is served with a subpoena or an order issued in other
13 litigation that would compel disclosure of any information or items designated in
14 this action as "CONFIDENTIAL," the Receiving Party must so notify the
15 Designating Party, in writing (by fax, if possible) immediately and in no event
16 more than three (3) court days after receiving the subpoena or order. Such
17 notification must include a copy of the subpoena or court order.
18
19

20 The Receiving Party also must immediately inform in writing the Party who
21 caused the subpoena or order to issue in the other litigation that some or all the
22 material covered by the subpoena or order is the subject of this Protective Order.
23 In addition, the Receiving Party must deliver a copy of this Stipulated Protective
24
25

1 Order promptly to the Party in the other action that caused the subpoena or order to
2 issue.

3
4 The purpose of imposing these duties is to alert the interested parties to the
5 existence of this Protective Order and to afford the Designating Party in this case
6 an opportunity to try to protect its confidentiality interests in the court from which
7 the subpoena or order issued. The Designating Party shall bear the burdens and the
8 expenses of seeking protection in that court of its confidential material – and
9 nothing in this Order should be construed as authorizing or encouraging a
10 Receiving Party in this action to disobey a lawful directive from another court.
11

12 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13
14 If a Receiving Party learns that, by inadvertence or otherwise, it has
15 disclosed Protected Material to any person or in any circumstance not authorized
16 under this Stipulated Protective Order, the Receiving Party must immediately (a)
17 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
18 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
19 persons to whom unauthorized disclosures were made of all the terms of this
20 Order, and (d) request such person or persons to execute the “Acknowledgment
21 and Agreement to Be Bound” that is attached hereto as Exhibit A.
22
23

24 **9. FILING PROTECTED MATERIAL**

1 Without written permission from the Designating Party or a court order
2 secured after appropriate notice to all interested persons, a Party may not file in the
3 public record in this action any Protected Material. A Party that seeks to file under
4 seal any Protected Material must comply with applicable law.

6 **10. FINAL DISPOSITION**

7 Unless otherwise ordered or agreed in writing by the Producing Party, within
8 sixty (60) days after the final termination of this action, each Receiving Party must
9 return all Protected Material to the Producing Party. As used in this subdivision,
10 “all Protected Material” includes all copies, abstracts, compilations, summaries or
11 any other form of reproducing or capturing any of the Protected Material. With
12 permission in writing from the Designating Party, the Receiving Party may destroy
13 some or all of the Protected Material instead of returning it. Whether the
14 Protected Material is returned or destroyed, the Receiving Party must submit a
15 written certification to the Producing Party (and, if not the same person or entity, to
16 the Designating Party) by the sixty day deadline that identifies (by category, where
17 appropriate) all the Protected Material that was returned or destroyed and that
18 affirms that the Receiving Party has not retained any copies, abstracts,
19 compilations, summaries or other forms of reproducing or capturing any of the
20 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
21 an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
22
23
24
25

1 correspondence or attorney work product, even if such materials contain Protected
2 Material. Any such archival copies that contain or constitute Protected Material
3 remain subject to this Protective Order as set forth in Section 4 (DURATION),
4 above.
5

6 **11. MISCELLANEOUS**

7 11.1. Right to Further Relief. Nothing in this Order abridges the
8 right of any person to seek its modification by the Court in the future.
9

10 11.2. Right to Assert Other Objections. By stipulating to the entry of
11 this Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in
13 this Stipulated Protective Order. Similarly, no Party waives any right to object on
14 any ground to use in evidence of any of the material covered by this Protective
15 Order.
16

17 **ORDER**

18 IT IS SO ORDERED.

19
20 Dated this _____ day of _____, 2010.
21

22 _____
23 Judge Edward F. Shea
24
25